Filed 2/24/05 P. v. McGee CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JOHN EDWARD McGEE, JR. Defendant and Appellant.	E035796 (Super.Ct.No. SWF005502) OPINION

APPEAL from the Superior Court of Riverside County. Michael S. Hider, Judge. (Retired Judge of the Merced Superior Court, assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

David K. Rankin, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Lilia E. Garcia,

Supervising Deputy Attorney General, and Marilyn L. George and Annie Featherman Fraser, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant John Edward McGee was charged with possessing cocaine base for the purpose of sale (Health & Saf. Code, § 11351.5, count 1),[1] possessing cocaine for sale (§ 11351, count 2), possessing methamphetamine for sale (§ 11378, count 3), being a felon in possession of a firearm (Pen. Code, § 12021, count 4), and being a felon in possession of ammunition (Pen. Code, § 12316, subd. (b)(1), count 5). As to counts 1, 2, and 3, it was alleged that defendant had suffered a prior conviction for possession of cocaine base, within the meaning of section 11370.2, subdivision (a), and that defendant was personally armed with a .357-caliber magnum handgun and a shotgun during the commission of those offenses, within the meaning of Penal Code section 12022, subdivision (c).

Pursuant to a plea agreement, defendant pled guilty to the charges and admitted the truth of the enhancement allegations. The court sentenced defendant to a total determinate term of nine years in state prison.

On appeal, defendant contends that the trial court erred in denying his motion to suppress evidence. We affirm.

STATEMENT OF FACTS

At the hearing on defendant's suppression motion, Riverside County Deputy Sheriff Mark Reyes testified that on September 20, 2003, Edward Langston called the

[1] All further statutory references will be to the Health and Safety Code, unless otherwise noted.

sheriff's department about a possible trespasser inside a mobilehome trailer that he owned and was renting out to tenants (defendant and his girlfriend). Officer Reyes was dispatched at approximately 9:20 p.m. When he arrived at the scene, he met with Langston. Langston told Officer Reyes that did not think the tenants were at home, and that he saw a stranger go in through the front door of the mobilehome; Langston believed that the person was still there. Langston concluded that someone was trespassing and burglarizing the mobilehome.

Officer Reyes walked down the dirt driveway to the mobilehome. He knocked on the sliding glass door, where Langston told him that the stranger had entered. Hearing no response, Officer Reyes checked the door and found it unlocked. So, he opened the door and announced that he was from the sheriff's department. He poked his head inside the trailer and saw a juvenile male sitting on the couch playing a video game on the television. He asked the juvenile who he was and what he was doing there. As he was talking, Reyes noticed a gun on the couch about two to three feet away from the juvenile. Once he noticed the gun, he decided to enter the mobilehome to secure the gun for his safety and the safety of the juvenile. Officer Reyes stepped into the mobilehome, and as he contacted the juvenile and moved the gun aside, he turned around and saw contraband sitting on top of the kitchen table, about three or four feet away from him. He then took the juvenile outside to the patrol car. They both sat in the patrol car, and the juvenile told Officer Reyes that his cousin (defendant) lived in the mobilehome. As they were talking, Officer Reyes noticed some car headlights in his rear view mirror. Officer Reyes asked

the juvenile if the car that was approaching belonged to his cousin, and the juvenile said that it did.

Officer Reyes saw the driver of the car make "an abrupt move off to the side of the road and attempt[] to make a U-turn." Officer Reyes then turned his patrol car around, drove up toward the car, and spoke with the driver, whom he identified as defendant. Officer Reyes asked defendant if he was on probation or parole. Defendant told him he was "on probation for drugs." Officer Reyes confirmed with dispatch that defendant was on probation for possession of cocaine base. Officer Reyes then searched defendant and found $1,271 in his left front pocket. Pursuant to defendant's probation terms, Officer Reyes returned to the mobilehome to seize the contraband he had seen on the kitchen table. Officer Reyes also searched the rest of the mobilehome and found a loaded 20-gauge shotgun in the closet.

Defendant moved to suppress the following items on the ground that the search of his mobilehome had violated his Fourth Amendment right to be free from unreasonable searches: the drugs found in the mobilehome, the money found in his pocket, the handgun and its ammunition, the shotgun and its ammunition, an envelope with his name on it, photographs taken by the officers during the search, and the lab results and reports of the items seized. After hearing the evidence, the court stated that it was "satisfied that the motion should be denied," and then denied the motion.

Defendant now appeals.

ANALYSIS

The Trial Court Properly Denied Defendant's Motion to Suppress

Defendant contends the search of his mobilehome violated his Fourth Amendment right against unreasonable searches and seizures because the police officer failed to obtain a warrant to enter and search the mobilehome. Defendant argues that the entry into the mobilehome was not justified under the "community caretaker" exception or the exigent circumstances exception to the warrant requirement. Defendant further argues that the officer's later discovery that defendant was on probation could not be used to justify the entry either. Defendant concludes that the motion to suppress the evidence should have been granted since the items seized from his mobilehome were the result of an illegal search and were therefore the "fruit of the poisonous tree." (*Wong Sun v. United States* (1963) 371 U.S. 471, 488.)

A. Standard of Review

"In reviewing the trial court's ruling on the suppression motion, we uphold any factual finding, express or implied, that is supported by substantial evidence, but we independently assess, as a matter of law, whether the challenged search or seizure conforms to constitutional standards of reasonableness. [Citation.]" (*People v. Hughes* (2002) 27 Cal.4th 287, 327.)

B. Officer Reyes Was Justified in Entering the Mobilehome Under the "Community Caretaking" Exception

Except in extraordinary circumstances, the Fourth Amendment to the federal Constitution prohibits government agents from infringing upon a person's reasonable

expectations of privacy without permission or a warrant. (*People v. Morton* (2003) 114 Cal.App.4th 1039, 1046.) In *People v. Ray* (1999) 21 Cal.4th 464 (*Ray*), a plurality of our Supreme Court articulated the "community caretaking" exception to the general rule requiring a warrant. Under this exception, "circumstances short of a perceived emergency may justify a warrantless entry, including the protection of property, as 'where the police reasonably believe that the premises have recently been or are being burglarized.' [Citation.]" (*Id.* at p. 473.) "Of necessity, officers may enter premises to resolve the situation and take further action if they discover a burglary has occurred or their assistance is otherwise required. [Citations.]" (*Ibid*.) "The appropriate standard . . . is one of reasonableness: Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?" (*Id*. at pp. 476-477.)

In *Ray*, police officers were sent to a residence after a neighbor reported that "the door has been open all day and it's all a shambles inside." (*Ray, supra,* 21 Cal.4th at p. 468.) The officers found the front door standing open about two feet. The front room "'appeared to be ransacked as if someone went through it.'" (*Ibid*.) The officers received no response to repeated knocking and the announcement of their presence. Thinking it very likely they had encountered a burglary or similar situation, and concerned whether any persons inside might be injured or unable to call for help, the officers entered the residence and saw a large amount of suspected cocaine and money in plain view. (*Id*. at pp. 468-469.) The officers left the residence, informed their

supervisor of their observations, obtained a search warrant, and returned to the residence to seize the evidence. (*Id*. at p. 469.)

The *Ray* plurality drew a distinction between the "exigent circumstances" exception to the warrant requirement and the community caretaking exception. Justice Brown explained that in the case of exigent circumstances, officers enter premises to search for evidence or criminal suspects that the officers have probable cause to believe will be found there. In contrast, the community caretaking exception may *only* be invoked when officers are not acting to solve a crime. "With respect to Fourth Amendment guaranties, this is the key distinction: '[T]he defining characteristic of community caretaking functions is that they are totally unrelated to the criminal investigation duties of the police.' [Citations.] Upon entering a dwelling, officers view the occupant as a potential victim, not as a potential suspect." (*Ray*, *supra*, 21 Cal.4th at p. 471.)

The *Ray* court held that the officers' warrantless entry into the residence was proper under the community caretaking exception. (*Ray*, *supra*, 21 Cal.4th at pp. 477-478.) The court stated that "[w]hile the facts known to the officers may not have established exigent circumstances or the apparent need to render emergency aid, they warranted further inquiry to resolve the possibility someone inside required assistance or property needed protection." (*Id.* at p. 478.)

Furthermore, the *Ray* court analogized the facts before it with the facts in *State v. Alexander* (1998) 124 Md.App. 258 (*Alexander*). (*Ray*, *supra*, 21 Cal.4th at p. 479.) In *Alexander*, an anonymous caller reported to the police that his next-door neighbor's

basement door was open and that he believed his neighbor was away. (*Ray*, *supra*, 21 Cal.4th at p. 475.) The responding officer announced his presence and knocked on the front door. He received no reply, so he entered through the open basement door to determine if anyone was inside. While searching for possible intruders, he opened a walk-in closet door and observed marijuana. (*Ibid*.) The trial court suppressed the evidence, but the appellate court reversed. The appellate court explained that it was "undisputed that the police were not pursuing the [defendants] but were attempting to come to their possible aid . . . From the police perspective at all times prior to the ultimate discovery of drugs . . . , the [defendants] were innocent homeowners who were the possible victims of a crime and who were deserving of prompt police intervention and protection.' [Citation.]" (*Ray*, *supra*, 21 Cal.4th at p. 475.)

Similarly, in the instant case, Officer Reyes's entry into the mobilehome was justified, based on the community caretaking exception. Officer Reyes responded to the call from Langston, who told him that he saw a stranger go into the mobilehome and that he did not think defendant was at home. Officer Reyes went to the front door of the mobilehome and knocked on it. Hearing no response, Officer Reyes checked the door and found it unlocked. So, he opened the door and announced that he was from the sheriff's department. Officer Reyes took all of these actions as a function of his community caretaking duty to protect defendant's property. The officer was not pursuing defendant, but was attempting to come to his possible aid. In other words, Officer Reyes viewed defendant as a potential victim, not as a potential suspect. (*Ray*, *supra*, 21 Cal.4th at p. 471.) Given the known facts, Officer Reyes acted reasonably in the proper

discharge of his community caretaking function. (*Id*. at pp. 476-477.) Thus, his entry was lawful under the community caretaking exception to the Fourth Amendment.

Defendant argues that the community caretaking exception does not apply here because Officer Reyes entered the mobilehome while attempting to solve a crime (i.e., trying to catch the burglar). Defendant claims that the facts that the officer softly knocked on the front door only once and announced his presence as he was entering the mobilehome show that the officer "was trying to solve crime, by not alerting anyone inside of his presence." We do not consider the factors of how loudly the officer knocked, how many times he knocked, or when he announced his presence, to reveal anything about the officer's intention in entering the mobilehome.

Moreover, the community caretaking exception justifies a warrantless entry into a home to look for burglary suspects or to preserve an occupant's property. "Under the community caretaking exception, circumstances short of a perceived emergency may justify a warrantless entry, including *the protection of property, as 'where the police reasonably believe that the premises have recently been or are being burglarized.'* [Citation] 'Although the case law attaches slightly greater weight to the protection of persons from harm than to the protection of property from theft, many of the cases involving possible burglaries or breakings and enterings stress the dual community caretaking purpose of protecting both. [Citations.]' [Citation.]" (*Ray*, *supra*, 21 Cal.4th at p. 473, italics added.) Here, as discussed above, Officer Reyes entered defendant's mobilehome looking for a possible burglary in progress. Defendant was not the focus or

a suspect in the investigation. Rather, Officer Reyes was trying to render defendant aid and protect his property.

In sum, the ultimate question is whether Officer Reyes acted reasonably under the circumstances. We conclude that Officer Reyes's actions were entirely reasonable.

C. The Contraband Was in Plain View

It is well settled that objects falling in plain view of an officer, who has a right to be in the position to have that view, are subject to seizure and may be introduced in evidence. (*People v. Mack* (1980) 27 Cal.3d 145, 150.) Because Officer Reyes had a right to be in the mobilehome (see, *ante,* § B.), the contraband observed in plain view was properly seized and admitted in court as evidence.

D. The Other Evidence Was Properly Seized

Defendant argues that Officer Reyes's later discovery that defendant was on probation cannot be used retroactively to justify his entry into the mobilehome. Again, Officer Reyes's entry into the mobilehome was justified under the community caretaking exception to the warrant requirement. (See, *ante*, § B.)

We further note that Officer Reyes properly seized the evidence at issue, pursuant to defendant's probation terms. "In California, a person may validly consent in advance to warrantless searches and seizures in exchange for the opportunity to avoid serving a state prison term. [Citations] Warrantless searches are justified in the probation context because they aid in deterring further offenses by the probationer and in monitoring compliance with the terms of probation. [Citation.]" (*People v. Robles* (2000) 23 Cal.4th 789, 795.)

Here, it is undisputed that defendant was subject to a probation search condition. Thus, after Officer Reyes confirmed that defendant was on probation for possession of cocaine base, he properly seized the money from defendant's pocket, and properly returned to the mobilehome and seized the contraband and the two guns.

E. Conclusion

In view of the foregoing, the evidence taken from defendant was not the result of an illegal search and was therefore not fruit of the poisonous tree. Therefore, we conclude that the court properly denied defendant's motion to suppress.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ Ward
J.

We concur:

/s/ Ramirez
P. J.

/s/ McKinster
J.